

# Syria: Laying the Foundations for a Credible and Sustainable Transition

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# SYRIA: LAYING THE FOUNDATIONS FOR A CREDIBLE AND SUSTAINABLE TRANSITION

SCOTT LUCAS, CHRISTALLA YAKINTHOU AND STEFAN WOLFF

**Despite its extreme fragility, the ceasefire in place in Syria since February 2016 has afforded the opportunity to assess the options for a set of interim governance and transitional justice arrangements. These could establish the foundations for a transition following the conclusion of the Syrian civil war, regardless of its endpoint. Drawing on the specifics of the Syrian case and wider studies of interventions in, and transitions from, civil war, Scott Lucas, Christalla Yakinthou and Stefan Wolff consider the challenges of peace- and state-building, identifying both risks and mitigating actions. The article argues that risk mitigation is possible and should begin now. These efforts need to be supported by the international community in order to lay the foundations for a credible and sustainable post-civil war transition in Syria.**

On 14 March 2016, Russian President Vladimir Putin suddenly declared that his country was withdrawing ‘most’ of its forces from Syria, following thousands of air strikes in support of the Syrian regime and its Iranian, Hizbullah, Iraqi, Pakistani and Afghan allies. The announcement brought yet another phase in Syria’s five-year conflict to an end; however, as with the previous phases, it has not heralded any advance towards a resolution of the crisis.

Instead, the Russian intervention contributed to a consolidation of space in which leading Syria-based actors – the regime of President Bashar Al-Assad, the opposition rebel bloc: and the Kurdish movement (dominated at this point by the Syrian Kurdish Democratic Union Party, PYD, and its militia, known as the People’s Protection Units, YPG) – exercised and entrenched their authority locally. This occurred alongside efforts which were nominally concentrated on diminishing the power of the other two actors, Daesh (also known as the Islamic State of Iraq and Syria, ISIS) and

the Al-Qa’ida-affiliated Jabhat Al-Nusra. This consolidation has been helped along by the support that the opposition rebel bloc receives (primarily from Saudi Arabia and other Gulf States), a partial ceasefire that has been in place since 27 February 2016 and several rounds of negotiations in Geneva.

At the time of writing, the ceasefire between rebels, the Syrian military and the Assad regime’s external allied forces (Russia, Hizbullah, Iran, and Iraqi and Afghan militias) is breaking down in northwest Syria, notably near Aleppo and in the coastal Latakia province. At the same time, Kurdish YPG fighters are attempting to take territory from the rebels, while fighting has also continued between Daesh and rebels in northern Syria near the Turkish border. None of these contests are likely to conclude with a decisive military victory for any side. The situation in Syria is thus one characterised by a political and military stalemate and de facto partition. As the prospects of moving beyond this status quo in the near future are limited, a further consolidation of the various

front lines between regime, Kurdish and opposition forces is more likely to offer a stabilisation of the situation across much of Syria.

This analysis does not, in line with most of the literature on civil war settlement,<sup>1</sup> advocate the partition of Syria as a long-term solution to the country’s ongoing conflict. However, equally one cannot rule out that such partition – de facto or de jure – will be the eventual outcome of a civil war now in its sixth year. Therefore, the question this article addresses is not what a comprehensive and sustainable settlement of the conflict may look like in the future, but rather how to connect the legitimacy recently conferred on various Syrian actors by the Geneva negotiations and other international discussions to existing and future local arrangements establishing stability and security on the ground. These, in turn, are necessary conditions for a credible and sustainable transition from the current civil war. Arrangements put in place now for governance, reconstruction, provision of services, justice and civic engagement



Syrian Kurdish refugees at a refugee camp in Suruc, on the Turkey–Syria border, October 2014. *Courtesy of AP Photo/Lefteris Pitarakis.*

will lay the foundation for, and shape the direction of, the political, legal, economic and social constructions that will be necessary if there is ever again to be a meaningful ‘Syria’ in the sense of a single state, or even if several entities emerge in the aftermath of the civil war. These arrangements must be made now, rather than waiting for a terminal moment in the conflict. They must be based on recognition of the necessity of a ‘bottom-up’ approach, establishing connections with local groups rather than imposing a preconceived international model of the proper, ‘moderate’ procedures and actors.<sup>2</sup>

It is against this background that this article assesses the options of an interim system which – following the declaration of a cessation of hostilities – could establish the foundations for a subsequent transition, regardless of its endpoint. Thus, this analysis begins from the ground up, rather than from a top-down projection of ‘Syria’ from the outside. Drawing on the specifics of the Syrian case and the wider studies of interventions in, and transitions from, civil

war,<sup>3</sup> the article considers the challenges of peace- and state-building, and of transitional justice, identifying both risks and mitigating actions.<sup>4</sup> The key point here is that risk mitigation needs to begin now – and it needs to start with a sober analysis of the realities on the ground, rather than with the types of wishful, evasive and hyperbolic thinking that has characterised so much of Western intervention for more than a decade.

This article sits alongside efforts such as those of James Dobbins, Philip Gordon and Jeffrey Martini.<sup>5</sup> It echoes US President Barack Obama’s call for suggestions which respond to the question: ‘[S]pecifically, precisely, what exactly would you do, and how would you fund it, and how would you sustain it?’<sup>6</sup> The aforementioned analysts focus on the creation of safe zones, the partition of territory with international guarantors of the respective regime, opposition and Kurdish areas, prisoner releases, humanitarian deliveries and a co-operative destruction of Daesh. In contrast, this examination focuses on the governance and transitional justice

arrangements needed for a credible and sustainable post-civil war transition in Syria that can and should be supported by the international community now.

The next section offers a conceptual framework for the argument, drawing on existing literature on conflict settlement and post-civil war transitions. It makes use of a wide range of open-source data and it then offers a brief chronological narrative of the developing crisis in Syria. This forms the empirical basis for the subsequent analysis of the requirements for a credible and sustainable post-civil war transition in Syria and how steps taken now by the international community can contribute to laying these foundations. The article concludes with some brief policy recommendations embedded in an assessment of the benefits and shortcomings of the proposal.

### Preparing the Ground for Post-Civil War Transitions

There is broad agreement in the literature on civil war settlements that the success of war-to-peace transitions



is dependent on a number of factors, many of which are beyond the control of external actors whose engagement is nevertheless often critical to success.<sup>7</sup> Among those factors that are, at least partially, under the control of domestic and external actors is the design of post-civil war institutions: that is, the negotiated (or at times imposed) rules of the political game after the civil war concerning the forms of representation and participation (or exclusion) of different actors, and the distribution of power and resources among them.<sup>8</sup> From this perspective, transitions from civil war are often exercises in both peace-building and state-building,<sup>9</sup> which require a thorough analysis of the underlying conflict (including the causes of its onset and persistence).<sup>10</sup>

Most of the literature on conflict settlement and post-civil war transitions is focused on building democratic states. This is primarily based on the assumption that democracy in itself is a form of conflict settlement and helps to prevent conflict recurrence,<sup>11</sup> despite significant theoretical arguments and growing empirical evidence to the contrary.<sup>12</sup> Several recent studies emphasise the importance of local conditions to the success of democratic state-building after civil war, as caution against over-confident external democracy-builders that lack strong and committed local partners whom they can support.<sup>13</sup> Timothy D Sisk, in his account of the dilemmas of power-sharing in the Syrian civil war and more generally, has argued persuasively for 'the need for scholars to develop more contingent- and context-specific knowledge' if academic research is to make a meaningful contribution to policy.<sup>14</sup>

Thus, there is first of all a need for an approach that starts with a thorough assessment of the situation in Syria as it is, rather than what observers might wish it to be. The following section offers such an assessment, albeit with the caveat that the situation in Syria and the region more broadly remains highly fluid.

Second, while 'models' of post-civil war transitions, both in terms of the transition process and its substantive outcomes, are certainly limited in their transferability from one situation to

another, there are nonetheless some useful parallels that can be drawn from similar transitions in the past. Moreover, based on an analysis of conditions on the ground in Syria, such models can be adapted in order to establish some contingent predictions on likely trajectories of a post-civil war transition in the country. Predominantly, this is about lessons learned over time.

Third, the authors' own past research has generally confirmed the significance of domestic factors, and in particular the role of local leadership, in the success of war-to-peace transitions. These domestic factors can be shaped and success can ultimately be facilitated through a combination of institutional design and international diplomacy that enables local leaders to build on and leverage a shared commitment to peace.<sup>15</sup>

Taking the second and third points together, the current situation of relative stalemate and de facto partition can be used productively to shape the domestic conditions that will eventually create the foundations on which a post-civil war transition in Syria will be built. This article focuses on two areas of particular importance: future governance structures and transitional justice mechanisms for dealing with the conflict's legacy. These are not opportunistically chosen issues; instead, they reflect an established consensus on the importance of institutional design and the role that external actors play in its negotiation,<sup>16</sup> as well as on the need to reckon with the legacy of conflict-related violence in order to (re-)establish trust in those institutions. This, in turn, shapes a number of policy-relevant conclusions – not in terms of the design of any particular outcome of a post-civil war transition in Syria, but of the steps that can and should be taken now by the international community to make a credible and sustainable transition possible.

### Syria's De Facto Partition: Local Dynamics and External Agendas

From its very beginning in 2011, the dynamics of Syria's civil war have been shaped simultaneously by local factors, and the agendas of external regional players (Turkey, Iraq, Iran and the Gulf

States) as well as other global actors (the US and Russia). Overall, political conditions were characterised by failed attempts to broker political solutions externally under UN mediation and a highly fragmented and localised spectrum of armed opposition movements unable to form or sustain a common platform. Militarily, the overall trajectory has been one of regime contraction, the initial expansion of Daesh after summer 2014 and increasing territorial control of a wide range of anti-Assad forces, albeit accompanied by significant in-fighting among various groups in the opposition spectrum.

Until the summer of 2014, external military intervention was relatively limited and consisted of Western and Gulf Cooperation Council support of the opposition in the form of training and equipment. Similar Russian and Iranian support was given to the regime, complemented by a larger number of military advisers, as well as fighters provided by Hizbullah, Iraqi and Afghan militias, and the Iranian Revolutionary Guard which supported the Syrian army.

This changed in late 2014. The US-led coalition began operations against Daesh following its expansion in Iraq and northern Syria, which included an offensive which threatened the Kurdish centre of Kobane on the Turkish border. Even more significant was the backing of rebel factions by Gulf States. Reorganised in blocs such as Jaish Al-Fatah and the Southern Front, the groups advanced against the Syrian military in both the northwest and the south. As Assad's position became more and more precarious over the course of 2015, due to rebel victories and simultaneous Daesh offensives in the northeast and the centre of Syria, Russia decided to intervene with a two-pronged strategy of military intervention and diplomatic initiatives.<sup>17</sup>

On the diplomatic front, Moscow led efforts for international discussions on a 'political transition', but without a specific requirement for the departure of Assad. This initial diplomatic effort was frustrated by Saudi Arabia, which embarrassed Russia by bluntly declaring at a Moscow press conference in mid-2015 that Assad's removal was a prerequisite for negotiations. However,

Russia's simultaneous build-up of military assets, particularly warplanes, at a base in western Syria and the beginning of air strikes on 30 September fundamentally altered the political dynamics. The US, European states and even Turkey – a leading backer of the Syrian opposition – accepted that Assad could remain in power for at least six months while talks developed. Some US analysts and politicians went even further, saying that Washington now had to co-operate with the regime, even if it was responsible for the deaths of hundreds of thousands of Syrians.<sup>18</sup>

Meanwhile, the Russian military effort began to have an impact on the battlefield, consolidating and enhancing these political and diplomatic gains. Advanced battlefield equipment, hundreds of 'advisers' including special forces and spotters for aerial operations, and thousands of sorties – more than 80 per cent of which extended into opposition areas – supported ground offensives on six fronts by the Syrian military, Iranian commanders and troops, Hizbullah units and other foreign militias, particularly from Iraq and Afghanistan. The offensives initially struggled; however, by the end of 2015, they had stabilised Assad's defence lines from western Syria to Damascus. The attacks also began to erode rebel control in parts of northern and southern Syria, retaking almost all of Latakia province and achieving further, if limited, gains near Aleppo and south of Damascus.<sup>19</sup>

The Russian intervention thus succeeded in its immediate aim of saving the Assad regime from military collapse. Yet, by consolidating Assad's position on the ground – and thus, in effect, creating a military stalemate – and by contributing to the resumption of the political process in Geneva, Russia's intervention has led to the entrenchment of a *de facto* territorial partition of Syria. This in turn has created, and partly legitimised, the forces in control of those areas and has opened up political space for other groups, including the regime's opponents.<sup>20</sup> As these still-fragmented groups seek to find ways to govern the territories they occupy and to engage in broader political discussions with the regime through the UN-mediated Geneva process,<sup>21</sup> external

actors have an opportunity to contribute to laying the foundations of an eventual post-civil war transition by strengthening and supporting some of the local initiatives that have emerged.

Given the domestic and international consensus that there will be no place for Daesh and Jabhat Al-Nusra in post-civil war Syria, the focus of Western actors and their regional allies needs to be on their non-regime partners in Syria: the Kurdish movement and the broader opposition rebel bloc. Therefore, the remainder of this section focuses on tracing the events and processes through which, over the past eighteen months, both of these actors have come to occupy their current position.

Syria's Kurdish movement, specifically the PYD and the YPG, has both benefited from, and caused, regional schisms. The Kurdish movement began to receive US assistance, including aerial intervention, in 2014, in order to prevent Daesh's takeover of Kobane, the centre of a Kurdish canton on the Turkish border. However, Moscow's entry into the conflict, as well as the failure of a high-profile \$500 million 'train-and-equip' programme for rebels, prompted the US to incorporate this support for Kurdish factions into a new strategy. Rather than continuing the ill-fated train-and-equip programme and other forms of military support for various rebel factions, Washington encouraged the formation of the Syrian Democratic Forces (SDF), led by the YPG with a token inclusion of Arab and Assyrian units, to fight Daesh – even though Turkey believes the Turkish insurgent Kurdistan Workers' Party (PKK) is directing the PYD and its militia.<sup>22</sup>

As Washington supplied arms, ammunition, special forces and air cover, the SDF advanced against Daesh in eastern and northern Syria. In December, the forces captured the Tishreen Dam and, despite a Turkish 'red line', crossed to the western bank of the Euphrates River. This caused considerable anxiety within the Turkish government and arguably triggered the subsequent escalation of hostilities with the PKK in Turkey's southeast. Discussions between Washington and Ankara maintained an uneasy balance between US support for the SDF, including the formal deployment

of more special forces in April 2016, and Turkey's promotion of a 'safe zone' in northern Syria along the border.

That balance was further threatened by the YPG's launch of a new front, with attacks on rebels in northwest Syria, in January. The Kurdish forces, supported in some cases by Russian air strikes, seized towns and villages near the Turkish border as well as the Menagh Air Base. Although Turkey intervened with shelling in order to check the YPG's assault on the important border town of Azaz, the offensive raised the prospect of the Afrin canton in northwest Syria being linked with the Kobane and Cezire cantons in the northeast, thus creating a contiguous area under Kurdish control along the Turkish border which would be connected to the neighbouring Kurdistan region of Iraq. The cessation of hostilities on 27 February has limited this battle, but the conflict continues in sections of Aleppo city, along key supply routes and in Kurdish-occupied towns near the Turkish border.

Alongside a strengthened military position, the PYD sought, with Russian backing, to enter the political negotiations. The effort appeared to have paid off with a possible invitation from UN envoy Staffan de Mistura to join talks in Geneva at the end of January 2016; however, it was blunted by Turkish objections and threats to boycott the process, and de Mistura subsequently denied that any approach had been made. Russia's inclusion of PYD co-leader, Salih Muslim, on an alternative, fifteen-name list to the opposition rebel bloc also had little effect – other Kurdish groups objected to the PYD's claim to be representative of Syrian Kurdistan.<sup>23</sup>

Viewed through Washington's prism of a Daesh-first strategy, support of the SDF has been a partial, short-term response to the accusation that the US and its allies cannot pursue an effective intervention in the Syrian conflict. However, the PYD and YPG are not recognised as the unquestioned leaders of the Kurdish movement, as the dispute over representation at Geneva showed. Furthermore, the short-term accommodation between Turkey and the US is unlikely to continue, especially if the PYD expands its political control and the

YPG continues offensives in northwest Syria.<sup>24</sup>

Most importantly, the strategy does not address the central, continuing dimension of the civil war, which is the deadly fight for authority between the Assad regime, the Syrian opposition and the rebels. While the opposition rebel bloc has been plagued by a high degree of fragmentation and localisation since the beginning of the war in 2011, it is still the central actor on a national scale in the political and military contest for legitimacy.

Until late 2015, the movement continued to struggle for coherence and a unified political leadership, but the Russian initiative for political talks in the autumn of 2015, and its acceptance by the US, forced the different factions to reconsider their positions. This was encouraged by Saudi Arabia, whose support had become even more important as Washington began looking to Kurdish groups as an increasingly vital, and more reliable, ally inside Syria. By mid-December 2015, opposition political movements and rebel forces agreed to a 33-member High Negotiations Committee, with former Prime Minister Riyad Hijab as co-ordinator. Jaish Al-Islam, the main rebel faction near Damascus, joined the committee. Ahrar Al-Sham, the largest rebel group, initially signed the document, although it stepped back amid internal debates among its leadership and took on the role of interested observer of the Geneva talks.<sup>25</sup>

This high-level realignment has intersected with the development of local opposition rebel institutions that started earlier in 2015 amid the takeover of territory in areas such as Idlib province. Local committees have taken on the challenges of security, governance, systems of justice, repair of infrastructure and provision of services. Factions, including Ahrar Al-Sham, have begun to distance themselves from the problematic Jabhat Al-Nusra, even as they co-operate with the jihadist group in some battles.

The developing Kurdish and opposition rebel movements cannot create the conditions for a long-term settlement. In part, this is because of the conflicting demands of the

two sides, but it is also because of the immovable obstacle of the Assad regime's conditions for negotiating an agreement. Damascus has ruled out Kurdish autonomy in a 'federal' Syria, even though the regime's ally, Russia, put forth the idea in February 2016. President Assad, in effect, pre-empted the Geneva negotiations in late March when he said that he would never accept a transitional governing authority, the central element of international proposals in the period since June 2012. His position was reinforced at the subsequent talks by the regime delegation's refusal of any negotiations over the president's future.<sup>26</sup>

However, if the prospects of inclusive negotiations and constructive engagement in Geneva – let alone of any significant breakthrough – remain slim, the territorial and partial political consolidation among non-regime movements offers possibilities for an eventual transition. Kurdish political and military success against Daesh has buttressed de facto legitimacy as the authority in much of northeastern Syria, although this position remains somewhat tenuous, both in cities of divided control, such as Qamishli, and in relation to the rebels over attempts to join the Kurdish-dominated northwestern and northeastern cantons. The opposition rebel movement – having withstood bombing by both the regime and Russia, increased intervention on the ground by Iran, Hizbullah and other foreign fighters, protracted sieges, and attacks by the YPG and Daesh – can consequently claim a political space which is unlikely to disappear. This is most obviously the case in Idlib province, but will require externally facilitated local agreements in still-contested spaces in the divided city of Aleppo and the Damascus suburbs.

The key point here is about the existence of relatively consolidated local spaces, occupied by political actors that are potential partners for the West and its regional partners, now and in an eventual post-civil war transition. Such potential partners are needed regardless of whether Syria's current de facto partition is overcome in the context of a national solution or becomes more permanent in the longer term. The

emergence of these spaces and actors presents an opportunity for engagement and for strengthening and supporting local initiatives that can critically shape the nature and direction of a future transition. The different options available to the West and its partners in this context are the focus of the following sections.

### Post-Civil War Governance Arrangements in Syria: What to Expect and How to Prepare

Based on this article's analysis so far, it is possible to make some reasonable assumptions about different options and about the process and substance of a post-civil war transition in Syria. Once these are established, it is also possible to identify the key risks such options entail and to consider actions to mitigate those risks, laying the foundations of a credible and sustainable transition. To do this, this section first summarises the current state of affairs in Syria (as of May 2016) and then, based on more generalised findings from existing research on civil war settlements, extrapolate a possible trajectory for Syria. Special attention is given to the opportunities that the West and its regional partners now have to work with those non-regime forces which are politically, militarily and territorially more consolidated.

The starting point of the discussion, therefore, is that the contraction of the Assad regime seems to have been halted and its imminent defeat is unlikely. The regime has recovered and is now likely to co-exist with a diverse and sometimes opportunistic alliance of rebel groups, with differing ethnic, religious and political bases. Some are local entities, others are regional or national, backed by various external patrons whose agendas on Syria (and beyond) are, individually, not always coherent and, collectively, virtually incompatible. Those groups converge in three areas: the rejection of Assad and the senior political and military leadership of his regime; the rejection of Daesh and Jabhat Al-Nusra as legitimate players in a future transition; and the preservation of Syria's territorial integrity, rather than a negotiated break-up of the country into two or more successor areas.

In the current environment, characterised by a patchwork of slowly stabilising local battlefields across different front lines (the regime and those loyal to it versus the rebel opposition bloc; the regime and those loyal to it versus Daesh; the rebel opposition bloc versus Daesh; and the intra-rebel opposition bloc), it is unlikely that any of the factions will have such resounding military dominance on the battlefield that it will be able to impose its will on others concerning future governance arrangements in Syria. Nor is it likely that any would be able to sustain such an imposition beyond the short term. As a consequence, one should expect some form of a settlement negotiated primarily among the main rebel factions and their key external backers. Such a settlement will need to take account of five dimensions; and the extent to which these will be reflected in a balanced way in the terms of the settlement will determine its sustainability. They include: the ethnic, religious/sectarian, local and political divisions in Syria that have been hardening over the course of the civil war since 2011; the 'un-mixing' of formerly diverse local communities, and the consequent flows of internally displaced persons and refugees; the intense hatred and desire for revenge, as well as the deep distrust, between and within communities in Syria, resulting from the suffering endured during more than five years of civil war in which more than 400,000 people have been killed, more than 11 million displaced and more than 4.8 million have become refugees in neighbouring countries; the economic and humanitarian devastation of the country; and the regional, cross-border, and transnational ethnic, religious and sectarian alliances in which the Syrian civil war is embedded.

Given both the complexity of the constellation of actors in the Syrian civil war and of the issues at stake, existing research on civil war settlements<sup>27</sup> suggests that the most likely settlement will have three main characteristics. First, it will be rigid, with a predetermined composition of key transitional governance institutions and a territorial re-organisation of the state reflecting both the balance of power and the extent

of spatial control by different factions in the winning alliance at the time of a ceasefire or settlement. Second, it will be hybrid, reflecting pre-existing local, political, territorial and demographic realities on the ground. Third, it will be ambiguous, leaving significant room for competing and conflicting interpretations of settlement provisions and implementation procedures.

In other words, a viable negotiated agreement is likely to combine weak power-sharing arrangements at the centre with a multipolar and hybrid territorial system of self-governance that will usher in a tense and contested transition period, with the aim of achieving a more permanent set of arrangements.<sup>28</sup>

In light of recent experiences of post-civil war transitions, it is possible to envisage four 'models' or pathways. The first is the (pre-2015) Yemen model: a parallel (pre-)transition period characterised by a transitional government of national unity alongside a national dialogue, followed by a constitutional drafting process, all overseen and facilitated by the UN.<sup>29</sup> The second is the Bosnia model: a UN-sponsored peacekeeping operation overseeing the implementation of a constitution agreed as part of a comprehensive peace agreement.<sup>30</sup> The third is the Iraq model: the drafting and implementation of a constitution under military occupation.<sup>31</sup> The fourth is the Libya model: a rapidly disintegrating, domestically led process of post-conflict state-building.<sup>32</sup>

Of these four models, the Libya model is clearly undesirable, while the Iraq and Bosnia models are, to different degrees, unlikely as there is at this stage no realistic expectation of the necessary military footprint in Syria that would accompany either of these models. This leaves, realistically, only a version of the Yemen model. While the transition process in Yemen is far from complete and does not, at the moment, advertise itself as a resounding success of either international or regional crisis management, it offers a number of important insights into how to prepare for an eventual post-civil war transition in Syria, providing observers with the

opportunity to identify and potentially mitigate the likely risks that will be encountered.

The first question to ask is what can potentially go wrong in the negotiation and implementation of a political settlement. The Yemen model – as well as other recent experiences from the Arab uprisings of 2011 (including, in particular, Egypt and Libya), from Sudan's Comprehensive Peace Agreement and the subsequent civil war in post-independence South Sudan, from Afghanistan and Iraq, and from earlier conflict and crisis management experiences in the Western Balkans and the former Soviet Union – suggests that there are a number of key risks. These include: prolonged and eventually inconclusive peace negotiations after an initial, but potentially volatile, ceasefire has been established; a partial and not fully inclusive agreement, in which either crucial aspects of post-civil war governance arrangements are not covered in sufficient detail or are simply left for later negotiations; a partial agreement from which key players are excluded or subsequently walk away; a protracted transition period in which the implementation process stalls; or transitional arrangements which eventually become permanent.

All these risks bring with them the potential of defections from an agreement and the consequent possibility of renewed civil war, instigated by domestic or external actors (possibly through the creation of new proxy forces or through more direct forms of intervention), or by a combination of both.

Acknowledging these risks is an important first step towards early and effective mitigating action. While there is no guaranteed recipe that can conclusively and comprehensively mitigate all of them, there are a number of steps that can, and should, be taken now by the international community to avoid the nightmare scenario of another Libya and to avoid repeating the mistakes made in Yemen. Three sets of considerations should shape the thinking of the international community in preparing for a credible and sustainable post-civil war transition in Syria.



The first of these is to recognise, and act upon, the need for flexible, inclusive and expanding negotiation formats. This relates to both the participants and the issues. In terms of participants, now is the time to individually and collectively reach out to, and work with, as many players in the insurgency as possible at all levels. This should involve, at a minimum, discussions with willing parties on a formal or informal pre-negotiation agreement that would outline the principles of and an agenda for subsequent negotiations. As this process evolves, more parties can be brought in, creating a broader and more inclusive basis of future settlement negotiations and widening the consensus on its key principles and agenda items.

In parallel, the West and its regional partners now also have a better opportunity to build capacity within the opposition rebel bloc, which in turn can also help to overcome initial reluctance and persuade individual players to engage with a more established negotiation format. At the same time, such a process can sensitise international mediators and facilitators to the degree to which specific issues are particularly contested. It can further help them to shape an agenda for future negotiations that is sequenced in such a way that a breakdown of negotiations can be avoided and allow them to draw up contingency plans if negotiations stall over certain issues. It is also conceivable to imagine that NGOs currently engaged in humanitarian relief efforts could play a significant role in this process, especially as far as capacity-building at the local level is concerned. This needs to happen in such a way that it does not jeopardise their primary role, providing humanitarian relief; that it responds to local demand, instead of being driven solely by international conceptions of assistance; that it contributes to the involvement of civil society actors and organisations and prevents the monopolisation of the process by military and political elites; and that it enables a level of co-ordination with the international community that does not run counter to the long-term feasibility and viability of a political settlement.

The second set of considerations derives from the localised nature of the anti-Assad coalition and of non-regime forces more widely. It concerns the need to integrate top-down and bottom-up approaches in managing the transition process. On the one hand, any potentially sustainable settlement will need to reflect the military, political, economic and demographic realities in and beyond Syria. On the other hand, international efforts need to consider, shape and leverage local deals being made now, including assessing the impact of emerging local arrangements on the feasibility of future national-level structures. These efforts need to shape such deals wherever possible so that viable state structures can still emerge in a broader political settlement, and also so that they leverage the possibility and reality of local deals as building blocks for such a settlement. In all of this, it will be essential to factor in the current level of displacement of people within and beyond Syria, and the possibility and sustainability of their return and resettlement. Even if the current *de facto* partition of Syria cannot be overcome in the long term, addressing displacement would contribute to stability and security within and between each of the entities and thus reduce the likelihood of a later resurgence in violence. Critical to this would be the management of still-highly contested spaces like the divided city of Aleppo or the suburbs of Damascus.

The third and final set of considerations concerns the sustainability of the transition process as a means of both establishing and preserving peace and stability within and beyond Syria and of (re)building the social, political and economic foundations of a viable state in a situation in which local capacity to do so is in short supply, trust across communities is very low, and divisions are deep and entrenched. Consequently, careful consideration needs to be given to the use of settlement guarantees at different levels (local, national, regional, global) and across different sectors (political, economic, military). Such guarantees should be tied to incentives for the various Syrian parties (and

their external backers as appropriate) so that they limit the extent and impact of potential defections from the agreement. Equally importantly, now is the time to think about how the implementation of any future agreement can be sequenced such that all parties will remain committed to it.

### **Beyond Governance Arrangements: Addressing the Conflict's Legacy**

One of the key destabilising factors during and after any post-civil war transition period is the impact of the conflict's legacy on efforts to rebuild viable states and societies.<sup>33</sup> Transitional justice programming is meant to address such issues, but it is in itself a highly contested area of academic and policy debate. Moreover, it is one that intersects closely with state-building efforts inasmuch as rules of the post-war political game are likely to determine what is possible in terms of transitional justice and vice versa. Those who negotiate peace and future governance arrangements are likely to be guided as much by their own personal interests as by those of the communities they claim to represent; and are unlikely to volunteer for custodial sentences or for exclusion from positions of influence because of crimes and atrocities they committed.

Though little can meaningfully be planned to address atrocities and the conflict's legacy until the conditions for moving forward are understood, three main points stand out. First, if a transitional justice strategy is not to become isolated and meaningless, it will need to be embedded in existing networks, able to utilise them and current actors. This means confronting morally complex terrain. Second, the Syrian transition may well force the underlying assumptions and implementation mechanisms of transitional justice to be rethought; that is, the transition process may have the potential to 'reshape' transitional justice. Third, and related, transitional justice cannot be disengaged from local processes. Donors and international advisers must plan their strategies, and learn from past errors. The Syrian conflict has not left completely clear lines between insurgent groups,

non-militant organisations and civil society actors. With the militarisation of the conflict, actors that have arisen out of insurgency groups have often eclipsed those who have emerged from civil society, and in some cases they have been connected with one another. Because many activists have been killed, detained or forced to flee Syria, the initial force for reconstruction in 'liberated' areas is the leadership of rebel units. A decimated civil society also provokes questions about what capacity it may have to build or deepen local democratic structures. Rebuilding civil society structures and addressing the deep divisions within communities will take some time.

The experience of Ahrar Al-Sham, the largest faction in the rebellion, provides an interesting illustration of the issues that any transitional justice process will have to address. Making savvy use of social media, public relations and outreach strategies, Ahrar Al-Sham has rebranded itself,<sup>34</sup> moving from an organisation with links to Jabhat Al-Nusra to a mainstream Syrian opposition group that calls for 'a national unifying project' – one that, in the words of its international spokesman Labib Al-Nahhas, 'should not be bound to a single ideology'. It has broad internal networks across the spectrum of actors as well as good access to international media. Its 2015 articles in the *Washington Post* and the *Daily Telegraph* have demonstrated this new hybrid and its power.<sup>35</sup>

Looking ahead, it is possible that actors like Ahrar Al-Sham, and other groups (or their offshoots) that become increasingly 'moderate' as they are gradually incorporated into a peace process, will form the foundations of transitional justice work. They will certainly have an opinion on it and they will have access to media that will enable them to communicate those opinions. With these dynamics, a primary challenge will be ensuring that the process does not become a whitewashing of past crimes, nor a public relations tool for groups with one leg in militant camps and another in peace-building processes. Civil society organisations and humanitarian actors with pre-existing networks on the ground are likely to be key allies in any transitional justice

process. Groups such as the Syrian Justice and Accountability Centre, the Local Coordination Committees, the Violations Documentation Center, the Foundation to Restore Equality and Education in Syria, the Syrian Network for Human Rights, together with lawyers and activists, amongst others, have been involved in some of the most sophisticated, innovative and strategic documentation efforts that have ever existed during a conflict. A number of human rights actors have conducted steady and consistent work collecting, documenting and mapping evidence of human rights violations. The resulting repository of data is not only being used to track the scale of human and material loss, but is likely to form the backbone of any (unlikely) prosecutions and (more likely) reparations and reform processes. These organisations are likely to be ready to begin their work 'day one' after a settlement. In other words, the most relevant work regarding accountability for conflict-related atrocities in Syria will probably come from activists within local communities and from leading social media campaigns. Local councils operating in non-Assad parts of Syria, supported by a network of civil society organisations, are already dealing with issues of criminal justice and the radicalisation of local youth with micro-empowerment programmes and vocational training. These are likely to be the voices that shape practical thinking about dealing with the legacies of conflict-related violence.

Yet an important caveat also applies here: civil society actors have largely been marked by the same divisions as the rest of the conflict parties and are likely to be involved in the same internecine conflicts, an involvement that will probably become increasingly apparent as discussions around transitional justice begin in earnest. As regional and international organisations, foreign governments and their associated donor and development agencies start to think about post-civil war options for transitional justice, they should bear in mind a number of broader lessons to be learnt from other experiences of dealing with the legacy of conflict-related violence.

First, it will be important to think from the outset about a meaningful role for civil society in any transitional justice processes. Donor states should support the inclusion of civil society organisations at the initial planning stage. Moreover, human rights organisations should keep pressure on donors to remember that civil society organisations are key vectors for the construction of networks, social trust and, ultimately, social cohesion. The corollary of this is that adequate funding should be allocated from the outset for civil society actors. Past experiences indicate that very few resources were allocated to such actors during transitional justice programming, a shortcoming which both significantly inhibits their ability to foster meaningful change and also hinders the objectives of transitional justice programming.<sup>36</sup> The inclusion of civil society perspectives in initial decision-making processes often improves long-term collaboration between civil society and the state, and can assist in the establishment of civil society actors as legitimate partners with (or counterweights to) the state. It will be important to allow time for civil society to rebuild its internal relationships. It is also important not to rush that process for the sake of keeping to an externally imposed timeframe or roadmap.<sup>37</sup>

Following from this, donors will need to think very carefully about funding ratios among different transitional justice initiatives. The allocation of funding is notoriously lopsided and this has damaged holistic approaches to transitional justice in the past. Including civil society actors in the process of donor and government prioritisation and strategy-setting from the beginning can ensure that the needs of stakeholders and relevant communities are reflected in national policies.

Equally, as discussions move towards truth-telling and truth-seeking, the process needs to be genuinely inclusive, and not rushed by external actors and timelines. The processes of truth-seeking are often inherently as important as – or sometimes more important than – any final report. This is particularly so when divisions are as deep as those in Syria.

Donors also need to develop a transitional justice strategy, rather

than funding discrete and unconnected projects. The strongest engagements with transitional justice processes have been those that foresaw a long-term commitment and responded appropriately to evolving needs. However, this approach needs vision, planning, sustained engagement and commitment, as well as flexibility. Finally, just as the conflict has lasted much longer than many people predicted, so recovery will similarly take more time than expected. Dealing with the conflict's legacy will be a multigenerational exercise. It will take time, it will suffer political setbacks, and it will require an awareness that there will be highs and lows. Long-term commitment will be necessary to overcome cycles of conflict and atrocity.<sup>38</sup>

## Conclusion

With the partition of Syria now a reality, and likely to remain so for at least the foreseeable future, a clearer strategy is needed to facilitate a gradual transition to a post-civil war order in which Assad and his inner circle may or may not have a permanent place. The space in the northwest of the country – and potentially the south, depending on military and political developments – needs to be consolidated and further legitimised. This needs to happen locally through the further development of local governance structures, including public service and judicial systems. Nationally, it requires the continuation of the negotiation process within and among the different factions in the civil war. Regionally and globally, efforts need to continue to protect non-regime spaces, to push back Daesh and Jabhat Al-Nusra, and to work towards a permanent and stable ceasefire between them that can be part of a post-civil war transition.

In those areas controlled by the opposition rebel bloc and the Kurdish forces, the West and its regional partners need to support nascent local efforts to meet the immediate challenges. These include the provision of food, shelter

and basic goods for both residents and the many displaced Syrians in the region; the creation of inclusive governance institutions; and the establishment of a legal system that follows due process and recognises legal rights.

International support for functioning governance needs to be seen as the beginning of a long process leading towards a de-escalation and resolution of the Syrian crisis, rather than as its endpoint. Pursued carefully, it can contribute to: establishing working relationships between the West, its regional partners and groups that have consolidated their presence in Syrian communities; consolidating a minimal political consensus among factions participating in the High Negotiations Committee; developing a more realistic and coherent approach to the Syrian crisis that is broadly shared by the West and its regional allies and thus renewing relations between those allies, including France, Turkey and the Gulf States, all of whom have expressed frustration with indecision inherent to and incoherence of US and British policy; offering an alternative to the long-term prospect of a protracted civil war and the consolidation and possible further expansion of territorial control by Daesh; and starting a process to assist in dealing with the ever-worsening humanitarian crisis.

This is by no means an optimal solution to the Syrian conflict, but there is no 'optimal solution' in the current situation because there is no single country, no single external coalition, no single strategy and no single anti-regime force. The rebels are consolidating their de facto state in the northwest. With the backing of Russia, Iran and Hizbullah, the Assad (or other Alawite-dominated successor) regime is almost certain to hold onto its heartland from the Mediterranean and Lebanese borders through Homs to Damascus. For their part, the Kurds are unlikely to give up their territorial gains or their vision of a federal Syria as a model for the future.

The political, legal and social development of opposition and Kurdish-held areas protected by a viable and externally guaranteed ceasefire is therefore the most productive approach. It provides for legitimacy and responsibility, while also addressing those issues that fed the uprising as well as encouraging groups with disparate viewpoints to seek progress through dialogue rather than confrontation. The establishment of governance and the provision of justice not only provides a counter to the Assad regime. It also confirms the existence of alternatives to Daesh. Eventually, it allows groups to be distinguished from factions such as Jabhat Al-Nusra. Finally, if Assad should happen to fall quickly, as Muammar Qadhafi did in Libya, or slowly and inconclusively, as Ali Abdullah Saleh did in Yemen, then the provision of that alternative could mitigate some of the violence and political instability that have marred the aftermaths of other 'Arab Spring' revolutions. ■

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## Notes

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- 34 Throughout 2015, Ahrar Al-Sham went through internal discussions about ideological development amid co-operation with other rebel factions and opposition groups, as it has distanced itself from Jabhat Al-Nusra and its previous allegiance to Al-Qa'ida. These discussions have led to debate among more astute analysts of the Syrian conflict about the future of Ahrar Al-Sham, both in its own right and in its relationship with other groups on the battlefield, and in terms of governance. See, for example, Aron Lund, 'Abu Yahia Al-Hamawi, Ahrar Al-Sham's New Leader', *Syria Comment*, 12 September 2015, <<http://www.joshualandis.com/blog/abu-yahia-al-hamawi-ahrar-al-shams-new-leader/>>, accessed 11 May 2016; Charles Lister, 'Syrian Islamists Reach Out to the U.S., but Serious Issues Remain', *Markaz*, 14 July 2015. Actors such as Saudi Arabia and Qatar, as well as Syrian opposition and rebel groups, have encouraged elements of Jabhat Al-Nusra to leave the faction and join blocs which include Ahrar Al-Sham. The initiative has reinforced the calls by some officials – such as Robert Ford, the former US ambassador to Syria – for engagement with Ahrar Al-Sham. However, misreporting by the mainstream media led to the inaccurate declaration that former US military commander and CIA Director David Petraeus was embracing Jabhat Al-Nusra and Al-Qa'ida. See Robert S Ford and Ali El Yassir, 'Yes, Talk with Syria's Ahrar Al-Sham', *Middle East Institute*, 15 July 2015; Shane Harris and Nancy A Youssef, 'Petraeus: Use Al Qaeda Fighters to Beat ISIS', *Daily Beast*, 31 August 2015. Without taking a position on the specific initiative of splitting off members of Jabhat Al-Nusra, it is this article's contention that the creation of space for governance, transitional justice and dialogue offers a more productive environment for discussions establishing political, judicial and military institutions that present a clear alternative to Al-Nusra.
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- 38 UN, 'Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice', March 2010; Etzioni, 'The Democratisation Mirage'.